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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 84 3

THE TIMES-MIRROR COMPANY, A CORPORATION, AND L. D. HOTCHKISS,

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

T. B. COSGROVE,
JOHN N. CRAMER,
Counsel for Petitioners.

F. B. YOAKUM, JR.,
Of Counsel.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Summary statement of the matter involved	2
Statement disclosing basis of jurisdiction	3
The questions presented	4
Reasons relied on for the allowance of the writ	5
Brief in support of petition for writ of certiorari	9
Opinions below	9
Jurisdiction	9
Statement of the case	10
Specification of errors	10
Argument	10
Summary of the argument	10
Point 1	11
Point 2	15
Point 3	17
Conclusion	20

Table of Cases Cited.

Bridges v. *Superior Court*, 98 Cal. Dec. 341	6, 14, 18
Carlson v. *California*, No. 667, U. S. Sup. Ct., this Term	4, 5, 6, 15
Craig v. *Hecht*, 263 U. S. 255	19
Eilenbecker v. *District Court*, 134 U. S. 31	4
Grosjean v. *American Press Co.*, 297 U. S. 233	6, 15, 19
Herndon v. *Lowry*, 301 U. S. 242	4, 5, 6, 13, 15, 17
Hickey, Ex parte, 4 Smedes & M. (Miss.) 751	19
Lovell v. *Griffin*, 303 U. S. 444	11
Near v. *Minnesota*, 283 U. S. 697	4, 6, 15
Nixon v. *State*, 207 Ind. 426	6
Palko v. *Connecticut*, 302 U. S. 319	11
Patterson v. *Colorado*, 205 U. S. 454	5
People v. *News-Times Publishing Co.*, 35 Colo. 253	16
Schneider v. *New Jersey*, 308 U. S. 147	4, 13
Shortridge, In re, [illegible] Cal. 526	6

Page

State v. *American-News Co.*, 64 S. D. 385 ..... 6, 19
Thornhill v. *Alabama*, No. 514, U. S. Sup. Ct., this Term 4, 5, 6, 15, 18, 19
Toledo Newspaper Co. v. *United States*, 247 U. S. 402 ..... 4, 5, 15
Whitney v. *California*, 274 U. S. 357 17

STATUTES CITED.

Constitution of the United States:
First Amendment 3, 4
Fourteenth Amendment 3, 4, 5
Judicial Code, Sec. 237b, as amended by Act of February 13, 1925, 43 Stat. 937 3

TEXT CITED.

Mr. Justice Brandeis (Yale University Press, 1932), pp. 108, 111 14

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 972

THE TIMES-MIRROR COMPANY, A CORPORATION, AND L. D. HOTCHKISS,

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Times-Mirror Company, a corporation, and L. D. Hotchkiss respectfully petition, by their counsel, T. B. Cosgrove and John N. Cramer, for a writ of certiorari to review a decision of the Supreme Court of the State of California, 99 Cal. Dec. 108 and 98 Pac. (2d) 1029, rendered January 31, 1940, which affirmed judgments of conviction in contempt proceedings instituted on affidavit presented to the Superior Court of the State of California, in and for the County of Los Angeles.

A.

Summary Statement of the Matter Involved.

The Times-Mirror Company and Hotchkiss are the publisher and managing editor, respectively, of the Los Angeles Times (hereafter called "Times"), a newspaper of general circulation in the City of Los Angeles and State of California (R. 10).

On December 21, 1937, there was published in the Times an editorial entitled "SIT-STRIKERS CONVICTED" (R. 10-11); on April 14, 1938, an editorial entitled "THE FALL OF AN EX-QUEEN" (R. 17), and on May 5, 1938, an editorial entitled "PROBATION FOR GORILLAS?" (R. 23).[1]

On June 3, 1938, citation was issued requiring petitioners to show cause why they should not be adjudged guilty of contempt of court for the aforesaid publications (R. 25). The Times was adjudged guilty of contempt for publication of each of the editorials, and Hotchkiss was adjudged guilty as to the editorial "SIT-STRIKERS CONVICTED" (R. 60). Separate fines were imposed (with alternative jail sentence as to Hotchkiss) for each editorial (R. 60-61).

"SIT-STRIKERS CONVICTED" AND "THE FALL OF AN EX-QUEEN" commented on verdicts of guilty previously rendered by Los Angeles Superior Court juries (R. 10, 17). They were published prior to sentencing of the convicted defendants (R. 10, 17). "PROBATION FOR GORILLAS?" was published after verdict of guilt and while application for probation was pending (R. 23). This editorial stated that the trial judge (mentioned by name) "will make a serious mistake if he grants probation" to the defendants (R. 24).

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[1] The editorials are in the Record, pp. 11, 17-18, 22-24.

No evidence of interference with any court proceeding was offered and no showing was made that the editorials created a "clear and present danger" of interference (R. 66-85, 148). In affirming the convictions, the California Supreme Court concluded that "a reasonable tendency to interfere with the orderly administration of justice" (R. 122), constituting punishable contempt, appeared from the tenor of the editorials (R. 128, 130, 133).

B.

Statement Disclosing Basis of Jurisdiction.

1. Jurisdiction is invoked under Section 237b of the Judicial Code, as amended by Act of February 13, 1925 (43 Stat. 937).

2. The judgment of the Supreme Court of California was entered January 31, 1940 (R. 148). Petition for rehearing, timely filed, was denied February 29, 1940 (R. 149).

3. The nature of the case has been stated (*ante*, p. 2). Upon argument on demurrer to the contempt citation, petitioners asserted reliance upon the First and Fourteenth Amendments to the United States Constitution, guaranteeing freedom of speech and of the press (R. 4, 28). The trial court overruled the demurrer (R. 94), and rejected the contention that petitioners were protected by these constitutional guarantees (R. 98-106). Upon review by the California Supreme Court these constitutional guarantees were again asserted (R. 61). In affirming the convictions the Supreme Court of California held that these constitutional guarantees did not protect petitioners (R. 134-137). There were two dissenting opinions (R. 139, 140).

4. The conclusion of the California court that the editorials were an abuse of the constitutional guarantee of freedom of speech and of the press presents for determina-

tion a substantial question relating to the extent of these privileges when exercised by a discussion of judicial proceedings. The criterion established by the Supreme Court of California and the application thereof to the editorials in question is at variance with principles recently announced by this Court.[2]

5. The following cases are believed to sustain jurisdiction:
Schneider v. *New Jersey*, 308 U. S. 147, and cases therein cited in Footnote 8;
Near v. *Minnesota*, 283 U. S. 697;
Toledo Newspaper Co. v. *United States*, 247 U. S. 402, 411;
Eilenbecker v. *District Court*, 134 U. S. 31.

C.

The Questions Presented.

Broadly stated, the question presented is this:

Do the convictions for contempt unlawfully abridge the right of freedom of speech and of the press guaranteed by the First and Fourteenth Amendments to the United States Constitution?[3]

Stated more specifically:

1. Does the "reasonable tendency to interfere" test adopted by the state court unduly limit the constitutional right of freedom of speech and of the press?

2. Does the "reasonable tendency to interfere" test, as applied by the state court to the editorials, constitute an

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[2] *Herndon* v. *Lowry*, 301 U. S. 242, 256, 263; *Thornhill* v. *Alabama*, No. 514 U. S. Sup. Ct., this Term, decided April 22, 1940; *Carlson* v. *California*, No. 667 U. S. Sup. Ct., this Term, decided April 22, 1940.

[3] *Schneider* v. *New Jersey*, 308 U. S. 147, and cases therein cited in Footnote 8.

unlawful abridgment of the right of freedom of speech and of the press?

3. Does the "clear and present danger" test, rejected by the state court, constitute the correct criterion for determining limitations on the constitutional right of freedom of speech and of the press?

4. Does the "clear and present danger" test, if applied to the editorials, disclose a legitimate exercise of the right of freedom of speech and of the press?

D.

Reasons Relied on for the Allowance of the Writ.

1. The criterion applied in the state court in holding the editorials contemptuous, is that the editorials "had a reasonable tendency to interfere with the orderly administration of justice" (R. 122). The state court relied on *Patterson* v. *Colorado*, 205 U. S. 454 (R. 126), and *Toledo Newspaper Co.* v. *United States*, 247 U. S. 402 (R. 135). Assuming the correctness of the test adopted, this Court nevertheless will inquire whether the test "as applied * * * denied * * * rights safeguarded by the Fourteenth Amendment."[4]

2. The "reasonable tendency" test unduly restricts vital constitutional privileges. The proper criterion is the "clear and present danger" test recently announced in *Herndon* v. *Lowry*, 301 U. S. 242, 256. The same test was applied by this Court in the present Term in *Thornhill* v. *Alabama*, No. 514, and *Carlson* v. *California*, No. 667, both decided April 22, 1940. The state Supreme Court rejected this

[4] *Herndon* v. *Lowry*, 301 U. S. 242, 247, 255. To the same effect, *Thornhill* v. *Alabama*, No. 514 U. S. Sup. Ct., this Term, decided April 22, 1940; *Carlson* v. *California*, No. 667 U. S. Sup. Ct., this Term, decided April 22, 1940.

test (R. 230) and referred to *Bridges* v. *Superior Court*, 98 Cal. Dec. 341, 358,[5] in support thereof. The legislative and executive branches of Government may not fetter freedom of expression[6] or punish the exercise of the right, unless the language used is "of such a nature as to create a clear and present danger" that it will bring about evils which may be prevented.[7] This Court should declare whether or not the judicial branch is subject to a similar restraint.

3. The ruling of the California court conflicts with the conclusions reached by the Supreme Courts of South Dakota and Indiana in *State* v. *American-News Co.*, 64 S. D. 385, and *Nixon* v. *State*, 207 Ind. 426, respectively. These decisions also dealt with alleged constructive contempts by publication. In view of the importance of the problem presented and the circumstance that "The constitution of every State in the Union guarantees to every citizen the right to freely speak, write, and publish his sentiments,"[8] it is necessary that this Court announce the criterion governing constructive contempt by publication to the end that desired uniformity will obtain.

WHEREFORE, your petitioners pray that a Writ of Certiorari issue under the seal of this Court, directed to the Supreme Court of the State of California, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that

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[5] This Court granted certiorari in the *Bridges* case on April 8, 1940 (No. 759, October Term, 1939).

[6] *Near* v. *Minnesota*, 283 U. S. 697; *Grosjean* v. *American Press Co.*, 297 U. S. 233.

[7] *Herndon* v. *Lowry*, 301 U. S. 242, 256. To the same effect, *Thornhill* v. *Alabama*, No. 514 U. S. Sup. Ct., this Term, decided April 22, 1940; *Carlson* v. *California*, No. 667 U. S. Sup. Ct., this Term, decided April 22, 1940.

[8] *In re Shortridge*, 99 Cal. 526, 533.

the judgment herein of said Supreme Court of California be reversed by this Court, and for such other and further relief as to this Court may seem proper.

Dated April 12, 1940.

THE TIMES-MIRROR COMPANY, a Corpotion and L. D. HOTCHKISS,
Petitioners,

By T. B. COSGROVE,
JOHN N. CRAMER,
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F. B. YOAKUM, JR.,

Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 972

THE TIMES-MIRROR COMPANY, A CORPORATION, AND L. D. HOTCHKISS,

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions Below.

The majority opinion of the Supreme Court of California (R. 120) is reported in 99 Cal. Dec. 108 and 98 Pac. (2d) 1029. The dissenting opinions (R. 139, 140) are reported in 99 Cal. Dec. 122 and 98 Pac. (2d) 1041. There is an unreported opinion of the trial judge (R. 95).

II.

Jurisdiction.

The basis of jurisdiction is given under heading "B" in the petition for Writ of Certiorari (*ante*, p. 3), and in the interest of brevity is incorporated here by reference.

III.

Statement of the Case.

A summary statement of the case appears under the heading "A" in the petition for writ of certiorari (*ante*, p. 2), and in the interest of brevity is incorporated here by reference. A more extended statement appears in the argument (*post*, p. 11 *et seq.*)

IV.

Specification of Errors.

The Supreme Court of California erred:

1. In adopting the "reasonable tendency" test as the criterion by which the propriety of the editorials was measured.

2. In concluding that the editorials had a "reasonable tendency" to interfere with the orderly administration of justice.

3. In refusing to adopt the "clear and present danger" test as the criterion by which the propriety of the editorials should be measured.

V.

ARGUMENT.

Summary of the Argument.

Point 1. The "reasonable tendency" test is an unconstitutional abridgment of the right of fredom of speech and of the press; it affords no reasonably certain dividing line between permissible and proscribed comment; it is a deterrent to the exchange of ideas on matters of great public interest.

Point 2. The erroneous conclusion of the state court that the editorials had a "reasonable tendency" to interfere with

the orderly administration of justice has sacrificed a freedom that "is the matrix, the indispensable condition, of nearly every other form of freedom" [9] "for a need which is fancied rather than real."[10]

Point 3. The "clear and present danger" test should be applied to determine the propriety of language claimed to interfere with the judiciary as well as to utterances claimed to offend against conventional penal statutes. This test affords a definite and certain standard. It will guarantee the exercise of an "essential liberty" [11] without jeopardizing the independence of the judiciary.

Point 1.

The "reasonable tendency" test is an unconstitutional abridgment of the right of freedom of speech and of the press; it affords no reasonably certain dividing line between permissible and proscribed comment; it is a deterrent to the exchange of ideas on matters of great public interest.

The editorials did not assail the court, impugn the motive of any judge, or contain any threat or suggestion of retaliation.

"SIT-STRIKERS CONVICTED" (R. 11) congratulated the county, its courts and law enforcement officers, upon the conviction of persons charged with violence in connection with a sit-down strike at a local airplane factory (R. 46). The attitude of the Times toward the open shop and its inflexible opposition to the closed shop and the sit-down strike was well known, and this editorial was but a reiteration of its frequently announced views on such matters (R. 43-48).[12]

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[9] *Palko* v. *Connecticut*, 302 U. S. 319, 327.

[10] Dissent of Mr. Justice Gibson (R. 140).

[11] *Lovell* v. *Griffin*, 303 U. S. 444, 452.

[12] Portion of affidavit of Harry Chandler, which affidavit was uncontradicted and accepted as true by the California Supreme Court (R. 134).

"THE FALL OF AN EX-QUEEN" (R. 17) was an analytical discussion of the sordidness of "boss-ship" in politics. The language was "temperate and considerate" and "free of any abusive or immoderate language."[13] An attempt was made to point out a persuasive moral. The editorial did "not refer to the case which was then pending" (R. 130), nor did it contain any suggestion respecting court proceedings.

"PROBATION FOR GORILLAS?" (R. 23) contained a statement of the Times' well-known views on labor violence and its opposition to the closed shop (R. 146-147). The editorial vigorously opposed granting of a pending petition for probation of two men convicted of felonies in labor disturbances. It is the established practice for probation officers to solicit opinions respecting the propriety of granting probation (R. 53), and such opinions are transmitted to the judge before whom the application for probation is pending (R. 53-54). Some time prior, and following the granting of a petition for probation, the Times had published an article declaring that probation should not have been granted, whereupon the then presiding judge of the Superior Court of Los Angeles County advised the Times that such objection should have been published while the petition was pending (R. 52). The District Attorney's office had, in one instance at least, written the trial judge before whom a petition for probation was pending, stating the views of the District Attorney as to the penalty which should be imposed (R. 55). Justice Gibson, in his dissenting opinion, points out "that the Times has blundered in following the example of a district attorney and in taking the suggestion of a superior court judge, with reference to the propriety of commenting on judicial proceedings" (R. 146).

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[13] From opinion of state Supreme Court reversing contempt conviction for other editorials (R. 139).

No showing was made either that the editorials came to the attention of any of the judges before whom the related matters were pending, or that any judge felt that he was influenced or embarrassed because of them. No one of the judges presiding in the related proceedings caused the contempt citations to issue.

Although verdicts of guilt had been returned in all the cases related to the editorials, the state Supreme Court held that the editorial comment constituted contempt of court because

> (1) "It cannot be successfully contended that the verdict was decisive of the case or was a final determination of the fate of the defendants" (R. 125), and
>
> (2) The "reasonable tendency [of the editorials] was to interfere with the ordinary administration of justice by the court in the action then pending before it" (R. 128).

Under this rule, before a citizen may exercise the constitutional right of freedom of speech, he must determine at his peril either that the fate of a defendant has been finally determined, or that his language may not have a reasonable tendency to interfere with the orderly administration of justice. Such standards are too vague and indeterminate to afford a constitutional basis for punishing for a claimed abuse of the exercise of what this court recently has termed "fundamental personal rights and liberties."[14] The "reasonable tendency" test "amounts merely to a dragnet which may enmesh anyone",[15] provided only that some judge may conclude that the citizen ought to have foreseen that his words might have a reasonable tendency to interfere with the ordinary administration of justice. In *Herndon v. Lowry, supra*, the statute, as construed, required the jury

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[14] *Schneider* v. *New Jersey*, 308 U. S. 147, 161.
[15] *Herndon* v. *Lowry*, 301 U. S. 242, 263.

to find that the defendant should have contemplated that his utterance might result in forcible resistance (301 U. S. 262), but according to the ruling of the State court in the *Times* case, intention is of no importance, if a judge sitting without a jury [16] concludes that the language used has a "reasonable tendency to interfere with the ordinary administration of justice." As stated by the trial court, it is immaterial that the utterance did not come to the judge's attention (R. 118).

This nebulous standard amounts in application to judicial censorship of comment, written or spoken, upon court proceedings. So serious may be the consequence resulting from a statement concerning judicial proceedings, so indefinite is the stage or zone where the permissible "point of finality" is reached, and so uncertain will be the average citizen whether his utterance may have a reasonable tendency to interfere with the orderly administration of justice, that, impelled by apprehension of criminal prosecution, he will remain mute despite his constitutional right of freedom of assemblage and discussion. As stated by an eminent legal scholar (now Mr. Justice Frankfurter):

> "Freedom of speech and freedom of assembly are empty phrases if their exercise must yield to unreasonable fear.
>
> • • • • • • •
>
> "The press is the most important vehicle for the dissemination of opinion. The Constitution precludes its censorship. Equally inadmissible should be all oblique methods to censor the press."
>
> Mr. Justice Brandeis (Yale University Press, 1932), pp. 108, 111.

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[16] The proceedings were summary—the state Supreme Court declaring unconstitutional the California statute prohibiting summary punishment for constructive contempt (R. 121); cf. *Bridges* v. *Superior Court*, 98 Cal. Dec. 350 *et seq.*

Point 2.

The erroneous conclusion of the state court that the editorials had a "reasonable tendency" to interfere with the orderly administration of justice has sacrificed a freedom that "is the matrix, the indispensable condition, of nearly every other form of freedom" "for a need which is fancied rather than real."

The judgment of conviction herein is, in effect, judicial censorship. Immunity from previous restraint does not exhaust the constitutional concept of freedom of speech and of the press. Subsequent punishment for innocent utterances must be prevented; otherwise the guarantee will be meaningless.[17]

The conclusion below that the editorials had a "reasonable tendency" to interfere violates these guarantees. The editorials have no "reasonable tendency" to influence or affect "a mind of reasonable fortitude."[18] No court ruling is assailed or criticized, no motive of any judge impugned, no threat implied or reprisal suggested. The erroneous conclusion that a "reasonable tendency" to interfere existed is occasioned by an improper application of the "reasonable tendency" test to an unwarranted construction of the meaning of the editorials. This court will inquire whether such application and construction has deprived petitioners of their constitutional rights.[19]

In testing the propriety of "Sit-Strikers Convicted", the court below indulged in assumptions and innuendoes

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[17] *Near* v. *Minnesota*, 283 U. S. 697, 715; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245-250; *Lovell* v. *Griffin*, 303 U. S. 444, 451.

[18] Justice Holmes dissenting in *Toledo Newspaper Co.* v. *United States*, 247 U. S. 402, 425.

[19] *Herndon* v. *Lowry*, 301 U. S. 242, 247, 255; *Thornhill* v. *Alabama*, No. 514 U. S. Sup. Ct., this Term, decided April 22, 1940; *Carlson* v. *California*, No. 667 U. S. Sup. Ct., this Term, decided April 22, 1940.

neither pleaded nor proved.[20] It viewed the editorial "in the light of these considerations" (R. 128).

"THE FALL OF AN EX-QUEEN" is characterized as "a scathing denunciation" and a "caustic criticism" of the defendant which would have a disturbing effect upon the judge" (R. 130). To construe this editorial as "scathing" and "caustic" illustrates the manner in which the court has applied the "reasonable tendency" test. We submit that it was "temperate and considerate" and "free of any abusive or immoderate language."[21]

"PROBATION FOR GORILLAS?" is likened (R. 131) to the articles under review in *Patterson* v. *Colorado*, 205 U. S. 454.[22] This editorial is condemned as an "approach to the court" (R. 132), although the court points out that it is not improper to express one's opinion concerning the propriety of granting probation if this is done by observing the formality of submitting the opinion to the probation officer, who would present it to the court (R. 132-133).

This construction and application unduly restricts and circumscribes the right to comment on any phase of a judicial proceeding until it has reached such a point of finality

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[20] Viz: "• • • such an influential paper as the Los Angeles Times • • • could not help having an effect upon the trial judge • • •. It cannot reasonably be said that they would have no tendency to influence the trial judge • • •. The editorial may not have been intended, but it is capable of being construed, as a notice to the trial judge that no leniency should be extended • • •, that should the court act contrary to the suggestions • • •, it might well expect adverse criticism in the columns of The Times" (R. 128).

[21] From opinion of state Supreme Court reversing contempt conviction for other editorials (R. 139).

[22] Patterson's articles, in the language of the Colorado Supreme Court, "• • • charged this court, and certain of its judges, with having been influenced by corrupt motives in their rulings theretofore made in pending causes, and that they would be so influenced in the final disposition of the same. Such articles further charged that such motives would operate on the court in its final decision of a pending cause • • • in which no action had as yet been taken by the court." (*People* v. *News-Times Publishing Co.*, 35 Colo. 253, 391.)

as no longer to be newsworthy. It condemns expression of opinion concerning probation because the opinion appeared where all could know the attitude of the paper, rather than through the probation officer, in which latter event what would be tantamount to a private communication to the court would be unobjectionable.

The public is entitled to a discussion of pending problems of government. Each of the three coordinate branches of government is of equal concern to the average citizen. Public interest is aroused and discussion encouraged perhaps more by the publication of current matters than of past events. If a moral cannot be drawn or an opinion expressed until the subject matter is no longer of interest, the message will be so untimely that it "will be ignored."[23]

POINT 3.

The "clear and present danger" test should be applied to determine the propriety of language claimed to interfere with the judiciary as well as to utterances claimed to offend against conventional penal statutes. This test affords a definite and certain standard. It will guarantee the exercise of an "essential liberty" without jeopardizing the independence of the judiciary.

The "clear and present danger" test forbids legislative and executive restraint upon freedom of speech and of the press

> "* * * unless speech would produce, or is intended to produce, a clear and imminent danger of some substantive evil which the State constitutionally may seek to prevent * * *."
>
> Justices Brandeis and Holmes concurring in *Whitney* v. *California*, 274 U. S. 357, 373.

This test was adopted by this court in *Herndon* v. *Lowry*, 301 U. S. 242, 256. It was applied in the present Term in

[23] Dissent of Justice Gibson (R. 147).

Thornhill v. *Alabama*, No. 514, and *Carlson* v. *California*, No. 667, both decided April 22, 1940. It should likewise apply to the judiciary when a constructive contempt by publication is asserted. It is not more than equally important to maintain the independence of the judiciary than to preserve the state itself. From the viewpoint of the accused, the "clear and present danger" test *a fortiori* should be applied in constructive contempt proceedings. In a conventional criminal proceeding the accused may have a jury. In the instant case the proceeding was summary, the court holding unconstitutional the California statute prohibiting summary punishment for constructive contempt by publication (R. 121).[24]

Adoption of the "clear and present danger" test would necessitate a reversal. The record is barren of evidence indicating that the editorials created a clear and present, or any, danger to the orderly administration of justice. No judge before whom the related criminal cases had been tried read the editorials or heard of them, so far as the record discloses, or complained or intimated that he was embarrassed by them. The record is void of any complaint by any of the parties that the editorials were or might be prejudicial to their cause. Manifestly, no "clear and present danger" existed. The "reasonable tendency" test is but a "seductive cliche", which, as applied below, has substantially impinged upon and curtailed a vital and essential right. The "clear and present danger" test vitalizes and protects this right. It guards it from assault for hypothetical abuses which are but "pernicious abstractions." It gives adequate protection to the judiciary and yet protects the speaker or publisher from being "summarily laid

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[24] cf. *Bridges* v. *Superior Court*, 98 Cal. Dec. 350, *et seq.*

by the heels."[25] When the press is no longer free, the judiciary will not long remain independent.

> "A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."
>
> *Grosjean* v. *American Press Co.*, 297 U. S. 233, 250.

> "The safeguarding of these rights (freedom of speech and of the press) to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government. Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of the right of free discussion. Abridgment of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government."
>
> *Thornhill* v. *Alabama*, No. 514 U. S. Sup. Ct., this Term, decided April 22, 1940.

> "The battles for a free Press are a part of the march of democracy. From complete strangulation by an autocratic monarchy in England in the seventeenth century the Press has risen through heroic efforts to occupy a distinguished and necessary place in our form of government."
>
> *State* v. *American-News Co.*, 64 S. D. 385.

> "The most dearly prized offspring of our national liberty, is the freedom of the press."
>
> *Ex parte Hickey*, 4 Smedes & M. (Miss.), 751, 781.

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[25] Dissent of Justice Holmes and Brandeis in *Craig* v. *Hecht*, 263 U. S. 255, 281.

Conclusion.

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari should be granted.

T. B. COSGROVE,
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Counsel for Petitioners.

F. B. YOAKUM, JR.,
Of Counsel.